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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/608,135	06/30/2000	Jan-Dieter Spalink	FOV0001-US	9698
26108	7590	12/06/2005	EXAMINER	
DANIELS DANIELS & VERDONIK, P.A. SUITE 200 GENERATION PLAZA 1822 N.C. HIGHWAY 54 EAST DURHAM, NC 27713			DINH, MINH	
			ART UNIT	PAPER NUMBER
			2132	

DATE MAILED: 12/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/608,135

Applicant(s)

SPALINK ET AL.

Examiner

Minh Dinh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 and 16-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 and 16-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 June 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. This action is in response to the amendment filed 09/26/2005. Claims 1, 10, 14, 24 and 26-27 have been amended.

Response to Arguments

2. Applicant's arguments filed 09/26/2005 with respect to the rejections of claim 1 under 35 USC 103 have been fully considered and are persuasive. However, the amendment has necessitated new grounds of rejection that are not based on prior art.
3. Applicant's arguments filed 09/26/2005 (see page 11, the last paragraph and page 12, the first two full paragraphs) with respect to the rejections of claims 14, 24, 26 and 27 under 35 USC 103 have been fully considered but they are not persuasive. Applicant argues that Rupp ("INDEX: A Platform for Determining how People Value the Quality of their Internet Access") does not teach a collection engine that connects to the network service provider (see page 12, the first full paragraph); however, in the last sentence of the previous paragraph, Applicant admits that user traffic is monitored and recorded by the billing gateway, as disclosed by Rupp. The billing gateway is a collection engine. Rupp further discloses in figure 1 that the billing gateway connects to a supervisor node; the supervisor node determines who has access to which service and thus, is functionally equivalent to a network service provider.

Applicant argues that the claimed collection engine collects the data anonymously and does not require input from a user to be able to collect and assemble data (see page 12, second paragraph). It is noted that the features upon which applicant relies are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). In addition, Rupp discloses that the gateway collects data that is not provided through interaction with the user (e.g., timestamp, connection length, amount of inbound/outbound traffic for the connection, source and destination IP addresses, port numbers, etc.) (Section 2.2, "User traffic is monitored ... network services are involved.")

Claim Objections

4. Claim 26 is objected to because of the following informalities: "network server provider" in line 10-11 should be changed to "network service provider". Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 1-23 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Regarding claim 1 claiming a method for collecting network usage data by which a network service provider generates an anonymized identifier based on a user identifier and a collection engine connected to the network service provider collects data that is sent to or from the user and associated the anonymized identifier with the collected data to create a transaction record. However, the specification does not disclose how the collection engine has access to the anonymized identifier generated at a different location and how the collection engine can associate a certain anonymized identifier with certain collected data when the anonymized identifier is generated by a different entity (i.e., the network service provider). Thus, the disclosure fails to enable one skilled in the art to make and use the claimed invention. Claim 24 is rejected on the same basis. Claims that are not specifically addressed are rejected by virtue of their dependency.

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 1-23 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01.

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- Regarding claims 1-13, the omitted step is: receiving at the collection engine the anonymized identifier and information identifying the transmitted data that is associated with the anonymized identifier. Since the network service provider generates the anonymized identifier, the collection engine would not have any anonymized identifier to work with and would not be able to associate data belonging to a certain connection with a corresponding anonymized identifier without receiving the anonymized identifier and information identifying the transmitted data that is associated with the anonymized identifier from the network service provider.
- Regarding claims 14-23, the omitted step is: receiving, at the collection engine, the anonymized identifier and information identifying classification and network transaction data that are associated with the anonymized identifier. Since the network service provider generates the anonymized identifier, the collection engine would not have any anonymized identifier to work with and would not be able to associate a classification as well as data belonging to a certain connection with a corresponding anonymized identifier without receiving the anonymized identifier and information identifying classification and the network transmission data that is associated with the anonymized identifier from the network service provider.

9. Claim 27 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant

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regards as the invention. Claim 27 recites the limitation "storing network transaction data associated with said anonymized identifier in accordance with such classification through a collection engine" in line 9-10. It is unclear what the limitation means by storing some information through a device. For examination purpose, the limitation is interpreted as "storing network transaction data associated with said anonymized identifier in accordance with such classification provided by a collection engine" (see figure 5).

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 14, 24 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rupp et al. ("INDEX: A Platform for Determining how People Value the Quality of their Internet Access") in view of Gabber et al (5,961,593) and Carr et al (5,835,915).

Regarding claim 14, Rupp discloses a method comprising: identifying a user of a computer network (section 2.1, second par.); creating an anonymized identifier at a network service provider, said anonymized identifier being associated with parameters such as a time stamp to determine time-of-use charges and type of application (e.g., traditional applications and time-critical application), the parameters meets the limitation

of a classification; and storing collected network usage data associated with an anonymized identifier in accordance with said classification in a database at the network service provider (fig. 1; section 2.2, 3rd paragraph; section 1; section 3.3.2, Time-of-Use Charges and Peak Shifting). Rupp also discloses that the classification is created by a billing gateway connected to a supervisor node; the supervisor node determines who has access to which service and thus, is functionally equivalent to a network service provider (figure 1). Rupp further discloses that the collected data is also used for billing purposes and, therefore, meets the limitation of network transaction data (section 2.2, third par.).

Rupp does not disclose how the anonymized identifier is created. Gabber discloses creating an anonymized identifier representing an identified user of the computer network (see Abstract). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Rupp and Gabber to include the step of creating an anonymized representing the identified user of the computer network, as taught by Gabber, so that the same user will be recognized by a consistent anonymized identifier.

Rupp discloses that the network transaction data is stored in a database at the network service provider; however, Rupp does not disclose that the network transaction data is stored in a database separate from the network service provider. Carr discloses that transaction data are stored in a database at a primary system and also in a duplicate database in a remote backup system separate from the primary system (col. 1, lines 16-60). Therefore, it would have been obvious to one of ordinary skill in the art

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at the time the invention was made to modify the Rupp method such that the network transaction data is stored in a database in a remote backup system separate from the network service provider in addition to the database at the network service provider, as taught by Carr. Widespread disaster over a large geographic area that adversely affects the primary system will not affect the remote backup system.

Regarding claims 24 and 26, Rupp discloses a method comprising: obtaining an identifier at a network service provider representing one or more users of a computer network (section 2.1, second par.); creating a first anonymized identifier; creating a classification record by associating a Quality of Service level, which meets the limitation of a classification, with the first anonymized identifier through a billing gateway; and storing the classification record in a database at the network service provider (fig. 1; section 2.2, third paragraph). Rupp further discloses in figure 1 that the billing gateway connects to a supervisor node; the supervisor node determines who has access to which service and thus, is functionally equivalent to a network service provider.

Rupp et al. do not disclose how the anonymized identifier is created. Gabber discloses the step of creating an anonymized identifier using the obtained identifier (see Abstract). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Rupp and Gabber to include the step of creating a first anonymized identifier using the obtained identifier, as taught by Gabber, so that the same user will be recognized by a consistent first anonymized identifier.

Rupp discloses that the classification record is stored in a database at the network service provider; however, Rupp does not disclose that the classification record is stored in a database separate from the network service provider. Carr discloses that records are stored in a database at a primary system and also in a duplicate database in a remote backup system separate from the primary system (col. 1, lines 16-60). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Rupp method such that the record is stored in a database in a remote backup system separate from the network service provider in addition to the database at the network service provider, as taught by Carr. Widespread disaster over a large geographic area that adversely affects the primary system will not affect the remote backup system.

12. Claims 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rupp in view of Gabber and Carr as applied to claim 14 above, and further in view of "Census Geography". Rupp, Gabber and Carr do not disclose that the classification is a geographic location, a Census block, a state or a zip code. The "Census Geography" reference discloses that geographic locations such as a Census block (page 2), a state (page 1) or a zip code (page 3) are used as classifications in methods for collecting data. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combined method of Rupp, Gabber and Carr such that geographic locations such as a Census block, a state or a zip code are used as

classification, as taught in "Census Geography", in order to protect the confidentiality of the collected information (see page 5).

13. Claims 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rupp in view of Gabber and Carr as applied to claim 14 above, and further in view of "National Center For Education Statistics". Rupp, Gabber and Carr do not disclose that the classifications used in data collection includes a telephone area code or a telephone exchange number. The "National Center For Education Statistics" reference discloses that the classification includes a telephone area code (page 11) or a telephone exchange number (page 6) is used in a method for collecting data. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combined method of Rupp, Gabber and Carr such that the classification includes a telephone area code or a telephone exchange number, as taught in "National Center For Education Statistics", in order to protect the confidentiality of the collected information.

14. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rupp in view of Gabber and Carr as applied to claim 14 above, and further in view of Ball et al. (6,446,200). Rupp, Gabber and Carr in claim 14 do not disclose that the classification includes one from the group consisting of: wireless, satellite, dialup, DSL, and ISDN. Ball discloses that the classification includes wireless or ISDN (fig. 3; col. 5, lines 50-53, 57-63). It would have been obvious to one of ordinary skill in the art at the time the

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invention was made to modify the combined method of Rupp, Gabber and Carr such that that the classification includes wireless or ISDN, as taught by Ball, so that data collected from various sources can be differentiated for analysis.

15. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rupp in view of Gabber and Carr as applied to claim 14 above, and further in view of "Results of the 1998 NASFAA Salary Survey". Rupp, Gabber and Carr do not disclose that the classification is a job function code. The "Results of the 1998 NASFAA Salary Survey" reference discloses that a job category title, which meets the limitation of a job function code, is used as a classification in data collection (see table "Change in Annual Full-Time Salaries"). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combined method of Rupp, Gabber and Carr such that the classification is a job function code, as taught in "Results of the 1998 NASFAA Salary Survey", in order to classify collected data based on job functions.

16. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rupp in view of Gabber and Carr as applied to claim 24 above, and further in view of Stallings ("Cryptography And Network Security"). Rupp further discloses the steps of collecting data being transmitted across the computer network; associating the first anonymized identifier with the collected data if the collected data is sent to or from the one or more users to create a transaction record; and storing the transaction record in a database (section 2.2, third paragraph). However, Rupp, Gabber and Carr do not disclose

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creating a second anonymized identifier using the first anonymized identifier and associating the second anonymized identifier with the collected data. Stallings discloses hashing a hash result (section 9.4, page 295), which is equivalent to creating a second anonymized identifier using the first anonymized identifier. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combined method of Rupp, Gabber and Carr to include the step of creating a second anonymized identifier using the first anonymized identifier, as taught by Stallings, and use it in the associating step. The motivation for doing so would have been to make it much more difficult to determine the user's identifier based on the second anonymized identifier (page 297).

17. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rupp in view of "Census Geography". Rupp discloses a method for collecting network usage data without associating personally identifiable information with the usage data comprising: identifying a user of a computer network (section 2.1, second par.); creating an anonymized identifier representing the user, said anonymized identifier being associated with a classification; and storing collected network usage data associated with said anonymized identifier provided by a billing gateway connects to a supervisor node; the supervisor node determines who has access to which service and thus, is functionally equivalent to a network service provider (figure 1; section 2.2, third paragraph). Rupp further discloses that the collected data is also used for billing purposes and, therefore, meets the limitation of network transaction data (section 2.2,

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third par.). Rupp does not disclose that the classification is a geographic location, a Census block, a state or a zip code. The "Census Geography" reference discloses that geographic locations such as a Census block (page 2), a state (page 1) or a zip code (page 3) are used as classifications in methods for collecting data. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Rupp and Gabber such that geographic locations such as a Census block, a state or a zip code are used as classification, as taught in "Census Geography", in order to protect the confidentiality of the collected information (see page 5).

Allowable Subject Matter

18. In view of the amendments filed 09/26/2005, the rejections of claims 1-13 under 35 U.S.C. 103(a) as being unpatentable over Rupp in view of Gabber and Carr have been withdrawn. Subject to the above 112 1st and 2nd paragraph rejections, claims 1-13 are allowable over the prior art of record.

Conclusion

19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 6,947,984 to Schweitzer et al.

20. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Minh Dinh whose telephone number is 571-272-3802. The examiner can normally be reached on Mon-Fri: 10:00am-6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gilberto Barron can be reached on 571-272-3799. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

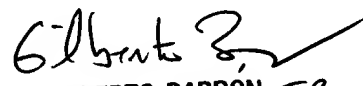
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MD

Minh Dinh
Examiner
Art Unit 2132

MD
12/03/05


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